

No. 82-1365

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# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1982

CONTINENTAL INSURANCE COMPANY,  
*Petitioner,*

VS.

SISTER RICCARDA MOSELEY, EXECUTRIX OF THE  
ESTATE OF AUDRAIN MAVIS-MARIE OLIVER,  
*Respondent.*

CONTINENTAL INSURANCE COMPANIES,  
*Petitioner,*

VS.

JEAN HOOPER STEVENS and AUDREY OLIVER,  
*Respondents.*

On a Writ of Certiorari to the  
Supreme Court of Nevada

### BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

I

This is not an appropriate case for review on Writ of Certiorari since there are no special and important reasons therefore, the Supreme Court of the State of Nevada has not decided an important question of Federal Law which

has not been, but should be, settled by this Court, nor has it decided a Federal Question in a way in conflict with applicable decision by this Court.

## II

The Nevada statutory provision for notice to creditors in a probate proceeding where summary administration has been ordered is a legislative procedural enactment which satisfies the due process requirements of the Constitution.

## III

Petitioner has no standing to raise the question of the adequacy of notice in the probate proceeding because it had actual notice of that proceeding before the time for filing claims had expired.

## STATEMENT OF THE CASE

The record which was before the Supreme Court of the State of Nevada is not before this Court. Petitioner's statement of the case with reference to that record should be disregarded. The facts are set forth in the Nevada Supreme Court Opinion (Appendix F of the Petition; *98 Nev Ad Op 142; 653 P2d 158*).

## ARGUMENT

The Nevada statutes in question provide for summary administration of estates that do not exceed Sixty Thousand Dollars (\$60,000.00) in gross value. They provide for publication of notice to creditors and any claim not filed within 60 days after the first publication of notice to creditors is barred forever. (The statutes in question are set forth in the Appendix hereto).

The Nevada Nonclaim Statute is not unique. Similar or identical statutes governing probate matters have been enacted in other states and the notice provisions uniformly upheld by the highest courts of those states. As examples see *Kuakini Hospital and Home v. Yamanoha* (Hawaii) 363 P.2d 1006, *Barrette v. Whitney* (Utah) 106 P.2d 522, *Latham v. McClenny* (Arizona) 285 P.2d 684 and *Everett v. Wing* (Vermont) 156 Atl. 393.

The cases uniformly hold that in determining whether due process of law has been denied regard must always be had to the character of the proceeding involved. A probate proceeding is not a controversy between named claimants, but is a legislative method devised to provide an expeditious and comparatively unencumbered means of accomplishing estate administration. No process is issued against anyone in such a proceeding, but all persons who might have an interest in the estate are constructively notified by the publication of notice. It is within the province of the various state legislatures to establish the procedure in such proceedings.

The writer can find no cases which hold that knowledge of a possible claim on the part of an executor or administrator, by itself, excuses filing of that claim.

The case most heavily relied on by Petitioner is *Mullane v. Central Hannover Bank and Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865. In that case the court speaking of due process requirements said:

"The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, *having reference to the subject with which the statute deals.*"

The Mullane case is not in point since it involved the adequacy of published notice by a trustee administering a trust for the benefit of named beneficiaries whose interests and addresses were known. Published notice as to those beneficiaries was held to be inadequate, however, the court said published notice was satisfactory as to beneficiaries whose interests or addresses were unknown to the trustee.

To impose a requirement that an executor or administrator must give personal notice to each creditor of the estate known to him would defeat the policy of the law that efficient and expedient administration of estates is essential. It would subject estates to endless litigation from creditors claiming they were entitled to the special treatment.

Finally, and probably of most significance, Petitioner has no standing to complain of the adequacy of notice in this proceeding since it had actual notice of the proceeding before the time for filing claims expired. It was through its own indifference, carelessness, and dilatory attitude that its claim was denied.

It is respectfully submitted that the petition should be denied.

Dated this 26th day of April, 1983.

COOKE, ROBERTS & REESE, LTD.

THOMAS A. COOKE  
*Counsel for Respondents*

**Appendix**  
**Nevada Revised Statutes**

**145.010 Application of chapter.** The provisions of this chapter shall apply only to estates of which summary administration shall be ordered.

[Part 308:107:1941; 1931 NCL § 9882.308]

**145.020 Contents of petition seeking summary administration.** All proceedings taken under this chapter, whether or not the decedent left a will, shall be originated by a petition for letters testamentary or letters of administration containing:

1. A specific description of all of the decedent's property.
2. A list of all the liens and encumbrances of record at the date of his death.
3. An estimate of the value of the property.

[Part 308:107:1941; 1931 NCL § 9882.308]

**145.049 Notice of hearing of petition.** Notice of hearing of the petition shall be given to the decedent's heirs, devisees and legatees as provided in NRS 155.010.

[Part 308:107:1941; 1931 NCL § 9882.308]—(NRS A 1975, 1770)

**145.040 When summary administration may be ordered.** When it is made to appear to the court or judge, by affidavit or otherwise, that the gross value of the estate does not exceed \$60,000, the court or judge may, if deemed advisable considering the nature and character of the estate

and the obligations thereof, make an order for a summary administration of the estate.

[Part 308:107:1941; 1931 NCL § 9882.308]—(NRS A 1965, 172; 1973, 431; 1975, 1770)

145.050 Regular proceedings and notices dispensed with: Exceptions; notice to creditors.

1. The order for a summary administration of the estate shall:

(a) Dispense with all regular proceedings and further notices, except for the notice to creditors of the appointment of the executor or administrator and notice of application for attorneys' fees.

(b) Provide that an inventory and appraisement or record of value be made and returned to the court.

2. The notice to creditors of the appointment of the executor or administrator shall be given by publication if the cost does not exceed \$25, in a newspaper printed in the county where the proceedings are pending, if there is such a newspaper; if not, then in one having general circulation in the county. If the cost of publication will exceed \$25, the notice shall be given in such manner as the court may require.

3. If a notice to creditors of the appointment of the executor or administrator is published in a weekly newspaper, the notice must appear therein on a total of three dates of publication; and if in a newspaper published more often than once a week, the notice shall be so published that there will be at least 10 days from the first to the last



dates of publication (both first and last days being included) and at least three issues during this period.

4. The notice to creditors shall be substantially in the following form:

Notice to Creditors

Notice is hereby given that the undersigned has been duly appointed and qualified by the (giving the title of the court and the date of appointment), as executor or administrator (as the case may be) of the estate of ....., deceased. All creditors having claims against the estate are required to file the same, with proper vouchers attached, with the clerk of the court, within 60 days after the first publication of this notice.

Date .....

[Part 308:107:1941; 1931 NCL § 9882.308]—(NRS A 1971, 1163; 1975, 1770; 1977, 108)

145.060 Creditors' claims; Filing, approval and payment.

1. Creditors of the estate must file their claims, due or to become due, with the clerk, within 60 days after the first publication of the notice to creditors of the appointment of the executor or administrator, and within 10 days thereafter the executor or administrator must act on the claims filed and present them in 3 days thereafter to the judge for his action.

2. Any claim which is not filed within the 60 days shall be barred forever.

3. Every claim which is filed as provided in this section, allowed by the executor or administrator, and approved by the judge, shall then, and not until then, be ranked as an acknowledged debt of the estate and be paid in due course of administration except that advance payment of small debts may be made pursuant to subsection 2 of NRS 150.230.

[Part 308:107:1941; 1931 NCL § 9882.308]—(NRS A 1975, 1771)